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Message Text

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C O N F I D E N T I A L COLOMBO 1097

EO 11652: GDS
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SUBJ: FAA SECTION 32 - POLITICAL PRISONERS

REF: A) STATE 68545; B) COLOMBO A-187, AUG 9, 1973

1. SRI LANKA'S NEW CONSTITUTION, ADOPTED IN 1972, INCLUDES AMONG OTHER FUNDAMENTAL RIGHTS, "THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION... OF ASSEMBLY, SPEECH, AND EXPRESSION INCLUDING PUBLICATION". CONSTITUTION, HOWEVER, ALSO SPECIFIES THAT THESE RIGHTS ARE "SUBJECT TO SUCH RESTRICTIONS AS THE LAW PRESCIRBES IN THE INTERESTS OF NATIONAL UNITY, INTEGRITY AND...SECURITY". JUXTAPOSITION IN SAME CONTEXT OF BOTH RIGHTS AND LIMITATIONS RELFECTS TWO PARALLEL REALITIES OF SRI LANKA: EXISTENCE OF LONG-ESTABLISHED AND FUNCTIONING DEMOCRATIC SYSTEM, BUT ONE SHAKEN BY EXPERIENCE OF ARMED INSURGENCY OF APRIL-MAY 1971 WHICH WAS DEFEATED AT COST OF SEVERAL THOUSAND LIVES. THIS EVENT, FOR FIRST TIME IN MODERN CEYLONESE HISTORY, FORCED GSL TO CONSIDER SERRHUSLY ISSUE OF DOMESTIC SECURITY. TENSION BETWEEN COMMITMENT TO RULE OF LAW AND EXIGENCIES OF HOME-GROWN REVOLUTION HAS BEEN ONE OF MAINSPRINGS OF NATIONAL POLITICS FOR LAST THREE YEARS.

2. THREE CATEGORIES OF DETAINEES ARRESTED FOR POLTICAL PURPOSES IN SRI LANKA MAY BE IDENTIFIED: A) PARTICIPANTS AND SUSPECTED ADHERENTS OF 1971 INSURGENCY - ABOUT 18,000

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ACCORDING TO GSL DATA; B) A NUMBER OF LEFT-WING ACTIVISTS

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SUSPECTED OF PREPARING FOR NEW INSURGENCY, ARRESTED INDIVIDUALLY
OR IN SMALL GROUPS OVER PAST SIX TO EIGHT MONTHS; C) SOME
MILITANT TAMIL NATIONALISTS ARRESTED FROM MAY 1973 TO APRIL 1974.

3. KEY ELEMENT FOR ALL THREE CATEGORIES OF DETAINEES
CENTERS ON THEIR LINK TO ACTS OF VILENCE, ACTUAL
AND POTENTIAL, AND NOT POLTICAL BELIEFS PER SE TO WHICH
THOSE ARRESTED MAY SUBSCRIBE. INDEED, EACH ACTIVE POLITICAL
PARTY IN SRI LANKA CONTAINS IMPORTANT FACTIONS OPENLY STRESSING
THEIR IDENTIFICATION WITH VIEWS HELD IN COMMON WITH INSURGENTS,
OR SUPPORT FOR TAMIL NATIONALISM IN CASE OF TAMIL PARTIES.
WILLINGNESS OF SUCH FACTIONS TO CONFINE THEIR ADVOCACY TO
INTERPLAY OF PARLIAMENTARY SYSTEM IS KEY DISTINCTION BETWEEN
TOLERATION AND DETENTION. FOR ALL THREE CATEGORIES INDIVIDUAL
DETAINEES WERE ARRESTED FOLLOWING ACTS OF WHAT GSL CONSIDERED
POLITICALLY MOTIVATED VIOLENCE RESULTING IN ACTUAL OR
POTENTIAL THREAT TO LAW AND ORDER AND TO NATIONAL POLITICAL
SYSTEM. INSURGENCY WAS ACCOMPANIED BY SUSTAINED MILITARY
ACTION, NUMBEROUS CASUALITIES AND WIDESPREAD DAMAGE, WITH GSL
PITTED AGAINST SELF-STYLED PEOPLES LIBERATION FRONT
(JVP) WHICH AIMED AT OVERTHROW OF MRS BANDARANAIKES
GOVERNMENT AND PARLIAMENTARY SYSTEM. IN RESPONSE TO GSL'S APPEAL
SEVERAL NATIONS, INCLUDING UK, INDIA, PAKISTAN, AUSTRALIA,
AND US, PROVIED ASSISTANCE TO COMBAT INSURGENCY.
SINCE THEN GSL HAS BEEN KEENLY ALERT TO POSSIBILITY OF REVIVED
JVP THREAT AND HAS CONTINED PRE-EMPTIVE DETENTION OF JVP
SYMPATHIZERS. RECENT ARRESTS WERE TRIGGERED BY SEVERAL
VIOLENT ROBBERIES AND MURDERS IN RURAL AREAS WHICH
SECURITY FORCES REPORTEDLY ASCRIBED TO WOULD-BE INSURGENCTS.
IN TAMIL CASE, ARRESTS OF TAMIL NATIONALISTS FOLLOWED
WAVE OF BOMBINGS AND OTHER VIOLENCE IN NORTHERN PROVINCE.

4. ARBITRARINESS: WHAT LIMITED INFO EXSISTS SUGGESTS
THAT ARRESTS HAVE NOT BEEN MADE ARBITRARILY, AS THOSE
RECENTLY ARRESTED HAVE HAD ACTIVE INVOLVEMENT WITH
EXTREMISTS. NOENTHELESS, MANY ARRESTED IN 1971 WERE
DETAINED ON FALSE AND UNRELIABLE INFO (E.G.,
RESULTING FROM PERSONAL DENUNCIATION). MOST OF THESE
HAVE BEEN RELEASED.

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5. CHARGES AGAINST DETAINEES AND TRIAL: HERE RECORD IS
MIXED BECUASE OF DELAY IN BRINGING CHARGES. CONSTITUTION
PLEDGES THAT "NO CITIZEN SHALL BE ARRESTED, HELD IN
CUSTODY, IMPRISONED OR DETAINED EXCEPT IN ACCORDANCE WITH
THE LAW". CEYLONESE LAW ENCOMPASSES CRIMINAL JUSTICE
COMMISSION ACT OF 1971 AND PERIODICALY RENEWED EMERGENCY
REGULATIONS, BOTH OF WHICH GIVE GOVT AND SECURITY
FORCES CONSIDERABLE DISCRETION IN HANDLING OF ALL ASPECTS

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OF LAW ENFORCEMENT. PROCESS OF INVESTIGATION ON
CASE-BY-CASE BASIS CAN AND DOES EXTEND FOR CONSIDERABLE
PERIODS BEFORE SPECIFIC CHARGES ARE BROUGHT AGAINST
INDIVIDUALS SUSPECTED OF POLITICALLY MOTIVATED OFFENSES.
IN CASE OF LEFTIST DETAINEES AND TAMIL MILITANTS, CHARGES
HAVE NOT YET BEEN MADE AS GSL SPOKESMEN CLAIM THAT
INVESTIGATIONS OF THEIR CASES STLL CONTINUE, BUT TRIALS
ARE PROMISED "SOON".

6. FOLLOWING IS BASIC GSL APPROACH IN HANDLING OF 18,000
PERSONS DETAINED IN 1971: WITHIN YEAR OF ARREST
SEVERAL THOUSAND WERE RELEASED WITHOUT CHARGES FOLLOWING
CAREFUL INVESTIGATION, PROCESS WHICH CONTINUED THROUGH
MID-1973 WHEN GSL WAS LEFT WITH 3000-4000 "HARD-CORE"
INSURGENTS. EVEN HERE, HOWEVER, OVER LAST NINE MONTHS,
GROUPS OF 75-100 INSURGENTS HAVE BEEN RELEASED ON BI-
WEEKLY BASIS FOLLOWING GUILTY PLEAS AND IMPOSITION OF
SUSPENDED SENTENCES (REF B). SINCE 1973, 41 JVP LEADERS
HAVE BEEN ON PUBLIC TRIAL BEFORE CRIMINAL JUSTICE
COMMISSION COMPOSED OF SUPREME COURT JUSTICES. ACCUSED
ARE DEFENDING THEMSELVES WITH AID OF POLITICALLY
SYMPATHETIC AND COMPETENT CONSEL AGAINST SPECIFIC CHARGES.

7. IN SUM, GSL DECISIONS ON POLITICAL ARRESTS HAVE DEPENDED
ON PRIOR OCCURRENCE OF POLITICALLY MOTIVATED VIOLENCE.
RECORD TO DATE INDICATES THAT ONCE ARRESTS TAKE PLACE
GSL PROCEEDS WITH INTENTION OF PLACING DETAINEES UNDER
JURISDICTION OF COUNTRYS NORMAL CIVILIAN LEGAL AND
JUDICIAL SYSTEM WHERE POLITICAL SUSPECTS EXERCISE RIGHT
TO DEFEND THEMSELVES EFFECTIVELY AND PUBLICLY. WHILE
NOT PERFECT, BY STANDARDS OF MOST THIR WORLD STATES
AND MANY DCS, THE CEYLONESE RECORD IS GOOD ON POLITICAL
ARRESTS, ESPECIALLY WHEN VIEWED AGAINST BACGROUND OF
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MAJOR INSURGENCY. ON BASIS OF THIS ASSESSMENT, WE
BELIEVE THAT SITUATION AGAINST WHICH SECTION 32 OF 1973
FOREIGN ASSISTANCE ACT IS DIRECTED DOES NOT EXIST IN
SRI LANKA.
VAN HOLLEN

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